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20

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

23

24 FABRIENNE ENGLISH and KAREN
25 LOWTHERT, on behalf of themselves and all
26 others similarly situated,

27

Plaintiffs,

28

v.

29 APPLE INC., APPLECARE SERVICE
30 COMPANY, INC., and APPLE CSC INC.,
31 Defendants.

32 Case No. 3:14-cv-01619-WHOA

33 **AMENDED STIPULATED
34 PROTECTIVE ORDER REGARDING
35 THE DISCLOSURE AND USE OF
36 DISCOVERY MATERIALS**

37 Courtroom 2, 17th Floor
38 Judge William H. Orrick

39 Complaint Filed: November 4, 2013
40 Transfer to N.D. Cal.: April 3, 2014
41 Trial Date: August 15, 2016

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1 Plaintiffs Fabrienne English and Karen Lowthert (“Plaintiffs”), and Defendants Apple
 2 Inc., AppleCare Service Company, Inc., and Apple CSC Inc. (“Defendants”) anticipate that
 3 documents, testimony, or information containing or reflecting confidential, proprietary, trade
 4 secret, and/or commercially sensitive information are likely to be disclosed or produced
 5 during the course of discovery, initial disclosures, and supplemental disclosures in this case
 6 and request that the Court enter this Order setting forth the conditions for treating, obtaining,
 7 and using such information.

8 Pursuant to Federal Rule of Civil Procedure 26(c), the Court finds good cause for the
 9 following Agreed Protective Order Regarding the Disclosure and Use of Discovery Materials
 10 (“Order” or “Protective Order”).

11 **1. PURPOSES AND LIMITATIONS**

12 (a) Protected Material designated under the terms of this Protective Order shall
 13 be used by a Receiving Party solely for this case, and shall not be used directly or indirectly for
 14 any other purpose whatsoever.

15 (b) The Parties acknowledge that this Order does not confer blanket
 16 protections on all disclosures or responses to discovery and that the protection it affords from
 17 public disclosure and use extends only to the limited information or items that are entitled to
 18 confidential treatment under the applicable legal principles. The parties further acknowledge, as
 19 set forth in Section 13, below, that this Stipulated Protective Order does not entitle them to file
 20 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
 21 followed and the standards that will be applied when a party seeks permission from the court to
 22 file material under seal. If it comes to a Designating Party’s attention that designated material
 23 does not qualify for protection at all, or does not qualify for the level of protection initially
 24 asserted, the Designating Party must promptly notify all other Parties that it is withdrawing or
 25 changing the designation.

26 (c) Each Party or Non-Party that designates information or items for protection
 27 under this Order must take care to limit any such designation to specific material that qualifies
 28 under the appropriate standards. To the extent it is practical to do so, the Designating Party must

1 designate for protection only those parts of material, documents, items, or oral or written
 2 communications that qualify – so that other portions of the material, documents, items, or
 3 communications for which protection is not warranted are not swept unjustifiably within the
 4 ambit of this Order. Mass, indiscriminate, or routinized designations are prohibited.
 5 Designations that are shown to be clearly unjustified or that have been made for an improper
 6 purpose (e.g., to unnecessarily encumber or retard the case development process or to impose
 7 unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

8 **2. DEFINITIONS**

9 (a) “Discovery Material” means all items or information, including from any
 10 non-party, regardless of the medium or manner generated, stored, or maintained (including,
 11 among other things, testimony, transcripts, or tangible things) that are produced, disclosed, or
 12 generated in connection with discovery or Rule 26(a) disclosures in this case, as well as any
 13 information copied or extracted therefrom, and any copies, excerpts, summaries, or compilations
 14 thereof.

15 (b) “Outside Counsel” means (i) outside counsel who appear on the pleadings
 16 as counsel for a Party and (ii) partners, associates, and staff of such counsel to whom it is
 17 necessary to disclose the information for this litigation.

18 (c) “Party” means any party to this case, including all of its officers, directors,
 19 employees, consultants, retained experts, and outside counsel and their support staffs.

20 (d) “Producing Party” means any Party or non-party that discloses or produces
 21 any Discovery Material in this case.

22 (e) “Protected Material” means any Discovery Material that is designated as
 23 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as
 24 provided for in this Order, as well as any information copied or extracted therefrom, and any
 25 copies, excerpts, summaries, or compilations thereof. Protected Material shall not include:
 26 (i) advertising materials that have been actually published or publicly disseminated; and
 27 (ii) materials that show on their face they have been disseminated to the public.

1 (f) "Designating Party" means any Party or non-party that designates any
2 Discovery Material as Protected Material.

3. COMPUTATION OF TIME

6 The computation of any period of time prescribed or allowed by this Order shall be
7 governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

4. SCOPE

14 (b) Nothing in this Protective Order shall prevent or restrict a Producing
15 Party's own disclosure or use of its own Protected Material for any purpose, and nothing in this
16 Order shall preclude any Producing Party from showing its Protected Material to an individual
17 who prepared the Protected Material.

18 (c) Nothing in this Order shall be construed to prejudice any Party's right to
19 use any Protected Material in court or in any court filing with the consent of the Producing Party
20 and the Designating Party or by order of the Court.

21 (d) This Order is without prejudice to the right of any Party to seek further or
22 additional protection of any Discovery Material or seek to modify this Order in any way,
23 including, without limitation, an order that certain matter not be produced at all.

24 (e) The Parties agree that this Protective Order does not address the production
25 of source code (including computer code, scripts, assembly, object code, source code listings and
26 descriptions of source code, object code listings and descriptions of object code, and Hardware
27 Description Language (HDL) or Register Transfer Level (RTL) files that describe the hardware
28 design of any ASIC or other chip). The Parties further agree that, at this time, Plaintiffs do not

1 anticipate propounding any discovery specifically requesting the production of Apple's source
 2 code, and Apple agrees that none of its responses to Plaintiffs' discovery served as of the date of
 3 this Order requires the production of source code. To the extent Apple determines that its
 4 responses to any discovery subsequently served by Plaintiffs would reveal or require the
 5 production of source code, Apple shall promptly provide notice of same to Plaintiffs. To the
 6 extent Plaintiffs specifically request in discovery for Apple to reveal or produce Apple's source
 7 code, Plaintiffs shall promptly provide notice of same to Apple. Within fourteen (14) days of
 8 either such notice, the Parties shall meet and confer regarding the negotiation of a protective order
 9 governing the production of source code. If the Parties are unable to reach agreement as to an
 10 acceptable protective order, Apple shall move the Court for protective order addressing the
 11 potential production of its source code and materials related to its source code.

12 **5. DURATION**

13 Even after final disposition of this litigation, the confidentiality obligations imposed by
 14 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 15 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 16 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
 17 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 18 including the time limits for filing any motions or applications for extension of time pursuant to
 19 applicable law.

20 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 (a) Basic Principles. All Protected Material shall be used solely for this case
 22 or any related appellate proceeding, and not for any other purpose whatsoever, including without
 23 limitation any other litigation, patent prosecution or acquisition, patent reexamination or reissue
 24 proceedings, or any business or competitive purpose or function. Protected Material shall not be
 25 distributed, disclosed, or made available to anyone except as expressly provided in this Order.

26 (b) Secure Storage. Protected Material must be stored and maintained by a
 27 Receiving Party at a location and in a secure manner that ensures that access is limited to the
 28 persons authorized under this Order.

1 (c) Legal Advice Based on Protected Material. Nothing in this Protective
2 Order shall be construed to prevent counsel from advising their clients with respect to this case
3 based in whole or in part upon Protected Materials, provided counsel does not disclose the
4 Protected Material itself except as provided in this Order.

5 (d) Limitations. Nothing in this Order shall restrict in any way a Producing
6 Party's use or disclosure of its own Protected Material. Nothing in this Order shall restrict in any
7 way the use or disclosure of Discovery Material by a Receiving Party: (i) that is or has become
8 publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or
9 lawfully known to the Receiving Party independent of the Producing Party; (iii) previously
10 produced, disclosed and/or provided by the Producing Party to the Receiving Party or a non-
11 party without an obligation of confidentiality and not by inadvertence or mistake; (iv) with the
12 consent of the Producing Party; or (v) pursuant to order of the Court.

7. DESIGNATING PROTECTED MATERIAL

1 (c) Native Files. Where electronic files and documents are produced in native
2 electronic format, such electronic files and documents shall be designated for protection under
3 this Order by appending to the file names or designators information indicating whether the file
4 contains “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 material, or shall use any other reasonable method for so designating Protected Materials
6 produced in electronic format. When electronic files or documents are printed for use at
7 deposition, in a court proceeding, or for provision in printed form to an expert or consultant pre-
8 approved pursuant to Paragraph 10, the party printing the electronic files or documents shall affix
9 a legend to the printed document corresponding to the designation of the Designating Party and
10 including the production number and designation associated with the native file. No one shall seek
11 to use in this litigation a .tiff, .pdf, or other image format version of a document produced in
12 native file format without first (1) providing a copy of the image format version to the Producing
13 Party so that the Producing Party can review the image to ensure that no information has been
14 altered, and (2) obtaining the consent of the Producing Party, which consent shall not be
15 unreasonably withheld.

16 (d) Depositions and Testimony. Parties or testifying persons or entities may
17 designate depositions and other testimony with the appropriate designation by indicating on the
18 record at the time the testimony is given or by sending written notice of how portions of the
19 transcript of the testimony is designated within thirty (30) days of receipt of the transcript of the
20 testimony. If no indication on the record is made, all information disclosed during a deposition
21 shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" until the time
22 within which it may be appropriately designated as provided for herein has passed. Any Party
23 that wishes to disclose the transcript, or information contained therein, may provide written notice
24 of its intent to treat the transcript as non-confidential, after which time, any Party that wants to
25 maintain any portion of the transcript as confidential must designate the confidential portions
26 within fourteen (14) days, or else the transcript may be treated as non-confidential. Any
27 Protected Material that is used in the taking of a deposition shall remain subject to the provisions
28 of this Protective Order, along with the transcript pages of the deposition testimony dealing with

1 such Protected Material. In such cases the court reporter shall be informed of this Protective
 2 Order and shall be required to operate in a manner consistent with this Protective Order. In the
 3 event the deposition is videotaped, the original and all copies of the videotape shall be marked by
 4 the video technician to indicate that the contents of the videotape are subject to this Protective
 5 Order, substantially along the lines of "This videotape contains confidential testimony used in
 6 this case and is not to be viewed or the contents thereof to be displayed or revealed except
 7 pursuant to the terms of the operative Protective Order in this matter or pursuant to written
 8 stipulation of the parties." Counsel for any Producing Party or Designating Party shall have
 9 the right to exclude from oral depositions, other than the deponent, deponent's counsel, the
 10 reporter and videographer (if any), any person who is not authorized by this Protective Order
 11 to receive or access Protected Material based on the designation of such Protected Material.
 12 Such right of exclusion shall be applicable only during periods of examination or testimony
 13 regarding such Protected Material.

14 **8. DISCOVERY MATERIAL DESIGNATED AS "CONFIDENTIAL"**

15 (a) A Party may designate Discovery Material as "CONFIDENTIAL" if it
 16 contains or reflects confidential, proprietary, and/or commercially sensitive information.

17 (b) Unless otherwise ordered by the Court, Discovery Material designated as
 18 "CONFIDENTIAL" may be disclosed only to the following:

19 (i) The Receiving Party's Outside Counsel, such counsel's immediate
 20 paralegals and staff, and any copying or clerical litigation support services working at the
 21 direction of such counsel, paralegals, and staff, provided that each such person has agreed to be
 22 bound by the provisions of the Protective Order by signing a copy of Exhibit A-1;

23 (ii) Not more than three (3) representatives of the Receiving Party who
 24 are officers or employees of the Receiving Party, who may be, but need not be, in-house counsel
 25 for the Receiving Party, as well as their immediate paralegals and staff, to whom disclosure is
 26 necessary for this case, provided that each such person has agreed to be bound by the provisions
 27 of the Protective Order by signing a copy of Exhibit A-1;

28

9 (iv) Court reporters, stenographers and videographers retained to record
10 testimony taken in this action;

12 (vi) Graphics, translation, design, litigation and discovery support,
13 and/or trial consulting personnel, having first agreed to be bound by the provisions of the
14 Protective Order by signing a copy of Exhibit A-1;

15 (vii) Mock jurors who have signed an undertaking or agreement agreeing
16 not to publicly disclose Protected Material and to keep any information concerning Protected
17 Material confidential, and having first agreed to be bound by the provisions of the Protective
18 Order by signing a copy of Exhibit A-1;

19 (viii) Any mediator who is assigned to hear this matter, and his or her
20 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
21 Protective Order; and

22 (ix) Any other person with the prior written consent of the Producing
23 Party and the Designating Party.

9. DISCOVERY MATERIAL DESIGNATED AS "HIGHLY CONFIDENTIAL -ATTORNEYS' EYES ONLY"

1 such Discovery Material is likely to cause economic harm or significant competitive disadvantage
2 to the Party. The Parties agree that the following information, if non-public, shall be presumed to
3 merit the “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation: trade
4 secrets, pricing information, financial data, sales information, sales or marketing forecasts or
5 plans, business plans, sales or marketing strategy, product development information, engineering
6 documents, testing documents, employee information, and other non-public information of
7 similar competitive and business sensitivity.

8 (b) Unless otherwise ordered by the Court, Discovery Material designated as
9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" may be disclosed only to:

10 (i) The Receiving Party’s Outside Counsel, provided that such Outside
11 Counsel is not involved in competitive decision-making, as defined by *U.S. Steel v. United States*,
12 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984) (“a counsel’s activities, association, and relationship
13 with a client that are such as to involve counsel’s advice and participation in any or all of the
14 client’s decisions (pricing, product design, etc.) made in light of similar or corresponding
15 information about a competitor”), on behalf of a Party or a competitor of a Party, and such
16 Outside Counsel’s immediate paralegals and staff, and any copying or clerical litigation support
17 services working at the direction of such counsel, paralegals, and staff;

1 competitor of a Party; and (d) such expert or consultant otherwise complies with the
 2 requirements set forth in Paragraph 10;

3 (iii) Court reporters, stenographers and videographers retained to record
 4 testimony taken in this action;

5 (iv) The Court, jury, and court personnel;

6 (v) Graphics, translation, design, litigation and discovery support,
 7 and/or trial consulting personnel, having first agreed to be bound by the provisions of the
 8 Protective Order by signing a copy of Exhibit A-1;

9 (vi) Any mediator who is assigned to hear this matter, and his or her
 10 staff, subject to their agreement to maintain confidentiality to the same degree as required by this
 11 Protective Order; and

12 (vii) Any other person with the prior written consent of the Producing
 13 Party and the Designating Party.

14 **10. PROCEDURES FOR DISCLOSURE**

15 (a) General Procedure for Disclosure of “CONFIDENTIAL” or “HIGHLY
 16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:

17 (i) Before any information or item designated “CONFIDENTIAL,” or
 18 substance or summary thereof, shall be disclosed to the persons or entities identified in
 19 subparagraphs (ii), (iv), (v), (vi), (viii), and (ix) of paragraph 8(b) above, the Parties are hereby
 20 ordered to tender a copy of this Stipulation and Protective Order to each such person and witness
 21 in order that each such entity or person to whom such disclosure of “CONFIDENTIAL”
 22 information or item is made shall be on notice and fully informed that the existence and substance
 23 of the Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or
 24 her. Before any information or item designated “CONFIDENTIAL,” or substance or summary
 25 thereof, is disclosed to any such person, each such person shall sign and abide by the terms of the
 26 “Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order,” attached
 27 hereto as Exhibit A-1, or, if the person to whom the “CONFIDENTIAL” information or item is to
 28 be disclosed is an expert, that person shall sign and abide by the terms of the “Expert/Consultant

1 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order," attached
2 hereto as Exhibit A-2, and shall otherwise comply with the requirements of Paragraph 10(c). The
3 person to whom the "CONFIDENTIAL" information or item is disclosed shall not give, show, or
4 otherwise divulge any of the "CONFIDENTIAL" information or item to any entity or person
5 except as specifically provided for by this Stipulation and Protective Order.

6 (ii) Before any information or item designated "HIGHLY
7 CONFIDENTIAL - ATTORNEYS' EYES ONLY," or substance or summary thereof, shall be
8 disclosed to the persons or entities identified in sub-paragraphs (iii), (iv), (v), (vii) and (viii) of
9 paragraph 9(b) above, the Parties are hereby ordered to tender a copy of this Stipulation and
10 Protective Order to each such person and witness in order that each such entity or person to whom
11 such disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information or
12 item is made shall be on notice and fully informed that the existence and substance of the
13 Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her.
14 Before any information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
15 ONLY," or substance or summary thereof, is disclosed to any such person, each such person shall
16 sign and abide by the terms of the "Acknowledgment of Confidentiality and Agreement to Be
17 Bound by Protective Order," attached hereto as Exhibit A-1, or, if the person to whom the
18 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information or item is to be
19 disclosed is an expert, that person shall sign and abide by the terms of the "Expert/Consultant
20 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order," attached
21 hereto as Exhibit A-2, and shall otherwise comply with the requirements of Paragraph 10(c). The
22 person to whom the "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" information
23 or item is disclosed shall not give, show, or otherwise divulge any of the "HIGHLY
24 CONFIDENTIAL - ATTORNEYS' EYES ONLY" information to any entity or person except as
25 specifically provided for by this Stipulation and Protective Order.

1 (b) Procedure for Disclosure of "CONFIDENTIAL" Information or Items to
2 Mock Jurors:

3 (i) A Receiving Party may disclose to mock jurors materials prepared
4 by its outside counsel that are derived from information or items designated “CONFIDENTIAL”
5 (but not materials that are derived from information or items designated “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”), so long as the derivative materials do not
7 include the as produced information itself. Before providing such material to a mock juror, the
8 Receiving Party must, in compliance with Paragraph 8(b)(vii) above, tender a copy of this
9 Stipulation and Protective Order to each mock juror in order that each person to whom such
10 disclosure is made shall be on notice and fully informed that the existence and substance of the
11 Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her, as
12 well as upon the Parties and their counsel. Before any materials prepared by outside counsel that
13 are derived from information or items designated “CONFIDENTIAL” are disclosed to a mock
14 juror, each such person shall sign and abide by the terms of the “Acknowledgment of
15 Confidentiality and Agreement to Be Bound by Protective Order,” attached hereto as Exhibit A-1.
16 The mock juror to whom the material is disclosed shall not give, show, or otherwise divulge any
17 of the information contained therein to any entity or person except as specifically provided for by
18 this Stipulation and Protective Order.

1 reach agreement as to an acceptable protective order, the Parties shall submit their dispute to the
2 Court, in compliance with Court rules and standing orders.

3 (c) Procedure for Disclosure of "CONFIDENTIAL" or "HIGHLY
4 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to Experts:

5 (i) Before any “CONFIDENTIAL” OR “HIGHLY CONFIDENTIAL-
6 ATTORNEYS’ EYES ONLY” information, or substance or summary thereof, shall be disclosed
7 to an Expert, the Expert shall sign and abide by the terms of the “Expert/Consultant
8 Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order,” attached
9 as Exhibit A-2, confirming that he or she is not presently employed by, and within the one year
10 prior to the date of retention as an Expert in these proceedings has not been employed by, has not
11 provided any form of consulting services to, and has not been and does not anticipate becoming
12 an officer or director or otherwise be involved with decision-making for, any companies or
13 entities engaged in the manufacture, sale, or distribution of products that compete with Apple’s
14 iPhone, iPad, iPod, and Mac products. During the pendency of and for a period of two (2) years
15 after the final resolution of this action, including all appeals, the Party seeking to disclose
16 Protected Material shall immediately (upon learning of same) provide written notice of any
17 change with respect to the Expert’s involvement in the areas at issue with respect to accepting
18 employment or consulting work for a company manufacturing , selling, or distributing products
19 that compete with Apple’s iPhone, iPad, iPod, and Mac products.

20 (ii) Within fourteen (14) days of receipt of the written notice of the
21 change with respect to the Expert's involvement in the areas at issue (e.g., she or he is
22 contemplating accepting employment or consulting for any companies or entities engaged in the
23 manufacture, sale, or distribution of products that compete with Apple's iPhone, iPad, iPod, and
24 Mac products) referenced in subparagraph (i) of Paragraph 10(c), the Producing Party or Parties
25 may object in writing to the Expert for good cause. In the absence of an objection at the end of
26 the fourteen (14) day period, the Expert shall be deemed permitted to continue as expert and
27 approved under this Protective Order. There shall be no further disclosure of Protected Material
28 to the Expert prior to expiration of this fourteen (14) day period. If the Producing Party objects to

1 disclosure to the Expert within such fourteen (14) day period, the Parties shall meet and confer
2 via telephone or in person within seven (7) days following the objection and attempt in good faith
3 to resolve the dispute on an informal basis. If the dispute is not resolved, the Party objecting to
4 the continuation of the Expert in this case, will have seven (7) days from the date of the meet and
5 confer to seek relief from the Court barring the Expert from further work and from access to the
6 Highly Confidential documents. If relief is not sought from the Court within that time, the
7 objection shall be deemed withdrawn. If relief is sought, designated materials shall not be
8 disclosed to the Expert in question until the Court resolves the objection.

13 (iv) An initial failure to object to an Expert under this Paragraph 10
14 shall not preclude the non-objecting Party from later objecting to continued access by that Expert
15 for good cause. If an objection is made, the Parties shall meet and confer via telephone or in
16 person within seven (7) days following the objection and attempt in good faith to resolve the
17 dispute informally. If the dispute is not resolved, the Party objecting to the disclosure will have
18 seven (7) days from the date of the meet and confer to seek relief from the Court. The designated
19 Expert may continue to have access to information that was provided to such Expert prior to the
20 date of the objection. If a later objection is made, no further Protected Material shall be disclosed
21 to the Expert until the Court resolves the matter or the Producing Party withdraws its objection.
22 Notwithstanding the foregoing, if the Producing Party fails to move for a protective order within
23 seven (7) business days after the meet and confer, further Protected Material may thereafter be
24 provided to the Expert.

25 (d) The Party's Counsel who discloses "CONFIDENTIAL" or "HIGHLY
26 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Material shall be responsible for assuring
27 compliance with the terms of this Stipulation and Protective Order with respect to persons to
28 whom such Protected Material is disclosed and shall obtain and retain the originals of the

1 “Acknowledgment of Confidentiality and Agreement to Be Bound by Protective Order” and
 2 “Expert/Consultant Acknowledgment of Confidentiality and Agreement to Be Bound by
 3 Protective Order” (if such execution was required by terms of this Stipulation and Protective
 4 Order).

5 **11. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

6 (a) Any Party or Non-Party may challenge a designation of confidentiality at
 7 any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is
 8 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
 9 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 10 confidentiality designation by electing not to mount a challenge promptly after the original
 11 designation is disclosed.

12 (b) The Challenging Party shall initiate the dispute resolution process by
 13 providing written notice of each designation it is challenging and describing the basis for each
 14 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 15 recite that the challenge to confidentiality is being made in accordance with this specific
 16 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good
 17 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of
 18 communication are not sufficient) within 14 days of the date of service of notice. In conferring,
 19 the Challenging Party must explain the basis for its belief that the confidentiality designation was
 20 not proper and must give the Designating Party an opportunity to review the designated material,
 21 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis
 22 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge
 23 process only if it has engaged in this meet and confer process first or establishes that the
 24 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

25 (c) If the Parties cannot resolve a challenge without court intervention, the
 26 Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7
 27 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice
 28 of challenge or within 14 days of the parties agreeing that the meet and confer process will not

1 resolve their dispute, whichever is later. Each party reserves the right, in the event that the other
 2 party makes multiple challenges, to seek relief from the Court to shift the burden to file a motion
 3 challenging the designation to the Challenging Party. The parties agree to meet and confer before
 4 seeking such relief. If the burden to file a motion shifts, the burden of persuasion will remain on
 5 the Designating Party.

6 Each such motion must be accompanied by a competent declaration affirming that the
 7 movant has complied with the meet and confer requirements imposed in the preceding paragraph.
 8 Failure by the Designating Party to make such a motion including the required declaration within
 9 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for
 10 each challenged designation. In addition, the Challenging Party may file a motion challenging a
 11 confidentiality designation at any time if there is good cause for doing so, including a challenge to
 12 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant
 13 to this provision must be accompanied by a competent declaration affirming that the movant has
 14 complied with the meet and confer requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating
 16 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 19 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 20 material in question the level of protection to which it is entitled under the Designating Party's
 21 designation until the court rules on the challenge

22 **12. SUBPOENAS OR COURT ORDERS**

23 (a) If at any time Protected Material is subpoenaed by any court, arbitral,
 24 administrative, or legislative body, the Party to whom the subpoena or other request is directed
 25 shall immediately give prompt written notice thereof to every Party who has produced such
 26 Discovery Material and to its counsel and shall provide each such Party with an opportunity to
 27 move for a protective order regarding the production of Protected Materials implicated by the
 28 subpoena.

13. **FILING PROTECTED MATERIAL**

14. (a) Without written permission from the Designating Party or a court order
 15. secured after appropriate notice to all interested persons, a Receiving Party may not file or
 16. disclose in the public record in this action any Protected Material. A Party that seeks to file under
 17. seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may
 18. only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected
 19. Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
 20. request establishing that the Protected Material at issue is privileged, protectable as a trade secret,
 21. or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
 22. Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
 23. Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
 24. 79-5(e)(2) unless otherwise instructed by the court.

13. **INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

14. (a) The inadvertent production by a Party of Discovery Material subject to the
 15. attorney-client privilege, work-product protection, or any other applicable privilege or protection,
 16. despite the Producing Party's reasonable efforts to prescreen such Discovery Material prior to
 17. production, will not waive the applicable privilege and/or protection if a request for return of such
 18. inadvertently produced Discovery Material is made promptly after the Producing Party learns of
 19. its inadvertent production.

20. (b) Upon a request from any Producing Party who has inadvertently produced
 21. Discovery Material that it believes is privileged and/or protected, each Receiving Party shall
 22. immediately return such Protected Material or Discovery Material and all copies to the Producing
 23. Party, except for any pages containing privileged markings by the Receiving Party which shall
 24. instead be destroyed and certified as such by the Receiving Party to the Producing Party.

25. (c) Nothing herein shall prevent the Receiving Party from preparing a record
 26. for its own use containing the date, author, addresses, and topic of the inadvertently produced
 27. Discovery Material and such other information as is reasonably necessary to identify the

1 Discovery Material and describe its nature to the Court in any motion to compel production of the
 2 Discovery Material.

3 **15. INADVERTENT FAILURE TO DESIGNATE PROPERLY**

4 (a) The inadvertent failure by a Producing Party to designate Discovery
 5 Material as Protected Material with one of the designations provided for under this Order shall
 6 not waive any such designation provided that the Producing Party notifies all Receiving Parties
 7 that such Discovery Material is protected under one of the categories of this Order within fourteen
 8 (14) days of the Producing Party learning of the inadvertent failure to designate. The Producing
 9 Party shall reproduce the Protected Material with the correct confidentiality designation within
 10 seven (7) days upon its notification to the Receiving Parties. Upon receiving the Protected
 11 Material with the correct confidentiality designation, the Receiving Parties shall return or securely
 12 destroy, at the Producing Party's option, all Discovery Material that was not designated properly.

13 (b) A Receiving Party shall not be in breach of this Order for any use of such
 14 Discovery Material before the Receiving Party receives such notice that such Discovery Material
 15 is protected under one of the categories of this Order, unless an objectively reasonable person
 16 would have realized that the Discovery Material should have been appropriately designated with a
 17 confidentiality designation under this Order. Once a Receiving Party has received notification of
 18 the correct confidentiality designation for the Protected Material with the correct confidentiality
 19 designation, the Receiving Party shall treat such Discovery Material (subject to the exception in
 20 Paragraph 15(c)) at the appropriately designated level pursuant to the terms of this Order.

21 (c) Notwithstanding the above, a subsequent designation of
 22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall
 23 apply on a going forward basis and shall not disqualify anyone who reviewed
 24 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" materials
 25 while the materials were not marked "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 26 ONLY" from engaging in the activities set forth in this Order.

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16. **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

2 (a) In the event of a disclosure of any Discovery Material pursuant to this
 3 Order to any person or persons not authorized to receive such disclosure under this Protective
 4 Order, the Party responsible for having made such disclosure, and each Party with knowledge
 5 thereof, shall immediately notify counsel for the Producing Party and the Designating Party
 6 whose Discovery Material has been disclosed and provide to such counsel all known relevant
 7 information concerning the nature and circumstances of the disclosure. The responsible
 8 disclosing Party shall also promptly take all reasonable measures to retrieve the improperly
 9 disclosed Discovery Material and to ensure that no further or greater unauthorized disclosure
 10 and/or use thereof is made

11 (b) Unauthorized or inadvertent disclosure does not change the status of
 12 Discovery Material or waive the right to hold the disclosed document or information as Protected.

13 17. **FINAL DISPOSITION**

14 (a) Not later than ninety (90) days after the final disposition of this case, as
 15 defined in Paragraph 5 above, each Party shall return all Discovery Material of a Producing Party
 16 to the respective outside counsel of the Producing Party or destroy such Material, at the option of
 17 the Producing Party.

18 (b) All Parties that have received any such Discovery Material shall certify in
 19 writing that all such materials have been returned to the respective outside counsel of the
 20 Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material,
 21 outside counsel may retain one set of pleadings, correspondence, and attorney and consultant
 22 work product (but not document productions) for archival purposes.

23 18. **MISCELLANEOUS**

24 (a) Right to Further Relief. Nothing in this Order abridges the right of any
 25 person to seek its modification by the Court in the future. By stipulating to this Order, the Parties
 26 do not waive the right to argue that certain material may require additional or different
 27 confidentiality protections than those set forth herein.

(b) Termination of Matter and Retention of Jurisdiction. The Parties agree that the terms of this Protective Order shall survive and remain in effect after the Final Disposition of the above-captioned matter. The Court shall retain jurisdiction after Final Disposition of this matter to hear and resolve any disputes arising out of this Protective Order.

(c) Successors. This Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

(d) Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order. This Order shall not constitute a waiver of the right of any Party to claim in this action or otherwise that any Discovery Material, or any portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence in this action or any other proceeding.

(e) Burdens of Proof. Notwithstanding anything to the contrary above, nothing in this Protective Order shall be construed to change the burdens of proof or legal standards applicable in disputes regarding whether particular Discovery Material is confidential, which level of confidentiality is appropriate, whether disclosure should be restricted, and if so, what restrictions should apply.

(f) Modification by Court. This Order is subject to further court order based upon public policy or other considerations, and the Court may modify this Order *sua sponte* in the interests of justice. The United States District Court for the Northern District of California is responsible for the interpretation and enforcement of this Order. All disputes concerning Protected Material, however designated, produced under the protection of this Order shall be resolved by the United States District Court for the Northern District of California.

(g) Discovery Rules Remain Unchanged. Nothing herein shall alter or change in any way the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for

1 the United States District Court for the Northern District of California, or the Court's own orders.
2 Identification of any individual pursuant to this Protective Order does not make that individual
3 available for deposition or any other form of discovery outside of the restrictions and procedures
4 of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for
5 the Northern District of California, or the Court's own orders.

6

7 Dated: January 23, 2015

By: /s/ Renee Kennedy

Renee Kennedy

8 **Attorneys for Plaintiffs**
9 **Fabrienne English and Karen Lowthert**

10

11 Dated: January 23, 2015

MORRISON & FOERSTER LLP

12

By: /s/ Purvi G. Patel

Purvi G. Patel

13 **Attorneys for Defendants**
14 **Apple Inc., AppleCare Service**
15 **Company, Inc., and Apple CSC Inc.**

16

17 **IT IS SO ORDERED.**

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19 Dated: January 27, 2015


HON. WILLIAM H. ORRICK
U.S. District Court Judge

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EXHIBIT A-1

ACKNOWLEDGMENT OF CONFIDENTIALITY
AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

4 I, _____, acknowledge and declare that I have received a
5 copy of the Protective Order (“Order”) in *English, et al. v. Apple Inc., et al.*, United States District
6 Court, District of Northern California, San Francisco Division, Civil Action No. 3:14-cv-01619-
7 WHO. Having read and understood the terms of the Order, I agree to be bound by the terms of
8 the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to
9 enforce the terms of the Order. I further agree I shall not at any time, either during the pendency
10 of these proceedings or after conclusion of these proceedings, use or divulge any of the
11 CONFIDENTIAL or HIGHLY CONFIDENTIAL INFORMATION made available to me
12 pursuant to the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm:

Address:

Dated: _____

[Signature]

EXHIBIT A-2**EXPERT/CONSULTANT ACKNOWLEDGMENT OF CONFIDENTIALITY
AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *English, et al. v. Apple Inc., et al.*, United States District Court, District of Northern California, San Francisco Division, Civil Action No. 3:14-cv-01619-WHO. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

By signing below, I hereby confirm that I am not presently employed by, and within the one year prior to the date of retention as an Expert in these proceedings have not been employed by, have not provided any form of consulting services to, and have not been and do not anticipate to be an officer or director or otherwise been involved with decision-making for, any companies or entities engaged in the manufacture, sale, or distribution of products that compete with Apple’s iPhone, iPad, iPod, and Mac products, and further agree that: (1) during the pendency of my retention as an Expert in this case, should I be contemplating or accept employment or consulting work or other officer, director or decision-making position with any such competing companies, I will notify the Party or Counsel for whom I am employed in this matter, twenty-one (21) days prior to commencing any such employment, work or position; and (2) that I shall not at any time, either during the pendency of these proceedings or after conclusion of these proceedings, use or divulge any of the CONFIDENTIAL or HIGHLY CONFIDENTIAL INFORMATION – ATTORNEYS’ EYES ONLY made available to me pursuant to the Order.

Name of individual: _____

Present occupation/job description: _____

1 Name of Company or Firm: _____

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3 Address: _____

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5 Dated: _____

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7 [Signature]

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ECF ATTESTATION

I, Purvi G. Patel, am the ECF user whose ID and password are being used to file this
[Proposed] Stipulation Protective Order Re Disclosure and Use of Discovery Materials. In
compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Renee Kennedy has concurred in
this filing.

Dated: January 23, 2015

MORRISON & FOERSTER LLP

By: /s/ Purvi G. Patel
Purvi G. Patel

FARVI G. FATER

*Attorneys for Defendants
Apple Inc., AppleCare Service
Company, Inc., and Apple CSC Inc.*